WITNESSES — PRIVILEGED COMMUNICATIONS — PATIENT'S COMMUNICATIONS TO DENTIST. — A statute forbade "a person duly authorized to practise physic or surgery" to disclose any information acquired while attending a patient in a professional capacity, necessary to enable him to act in that capacity. The plaintiff, a dentist, was allowed to testify concerning dental work done for the defendant's testator. *Held*, that there is no error. *Howe* v. *Regensburg*, 132 N. Y. Supp. 837 (Sup. Ct.).

A confidential relationship exists between a physician and patient which statutes like that in the principal case are intended to preserve, so that the patient, to get relief, may tell everything about his condition without fear that such communications will ever be used against him. See *Edington* v. *Mutual Life Ins. Co.*, 67 N. Y. 185, 194. Technically, dentistry is a branch of physic or surgery. *In the Matter of Hunter*, 60 N. C. 447. See *State* v. *Beck*, 21 R. I. 288, 293, 43 Atl. 366, 367. But it is difficult to imagine that a dentist's patient would be compelled to make damaging admissions in order to receive proper treatment. Thus, since the reason for the statute does not apply and since in common parlance dentistry is regarded as a separate profession, the decision of the principal case seems proper. See SUTHERLAND, STATUTORY CONSTRUCTION, 2 ed., §§ 367, 395.

BOOK REVIEWS.

WATER RIGHTS IN THE WESTERN STATES. By Samuel C. Wiel. Third Edition. In two volumes. San Francisco: Bancroft-Whitney Company. 1911. pp. xlvi, 967; 969–2067.

On account of the important changes which have been going on in the law of water rights in the western states in the past few years, this work, largely rewritten in view of such changes, which for the first time gives an adequate account of them, and discusses the principles involved, must supersede all our books upon the subject. Happily the work has been done so well that Mr. Wiel's treatise is likely to remain for a long time, as it were, an authoritative text. It has the merit, not common in current texts, of indicating the lines upon which progress is proceeding and should proceed, instead of merely digesting the recent cases and appending them to the views of prior writers. The author has thought critically and independently upon the important problems of the subject, especially upon the new problems arising under recent decisions, and thus has produced a book which deserves to be, and undoubtedly will be, of no little influence upon the case law of the subject.

One may commend especially the discussion of the tendency to depart from a possessory system of acquiring water rights and work out a use system. Undoubtedly the courts are hesitating between the two since many of them are bound by past decisions, if not wholly to the possessory system, at least to more than one consequence thereof. Mr. Wiel points out very clearly the relation of these two systems to the history of the subject, and his demonstration that the one view is historical and the other analytical should have much to do with enabling the courts to depart intelligently from rules which have a purely historical basis. It is to be hoped also that those who draft legislation with respect to water rights in the future will read Mr. Wiel's discussions carefully so that legislation will not waver between the two theories.

Another commendable discussion has to do with the recent tendency to recognize something very like riparian rights through perceiving that the owner

along the stream has a natural advantage which enables him to use the water to more purpose than owners remote from the stream. The decisions and legislation with respect to "sub-irrigation" and appropriation by improvement of natural surroundings which depend upon the flow of the water show that the common law was by no means wholly inapplicable even to our arid regions and that the judicial experience involved in the doctrine of riparian rights could not after all be entirely rejected.

A writer upon the law of irrigation at present is in truth compelled to write from two standpoints. On the one hand he must develop the law of appropriation founded upon a possessory system as it has existed in the past; on the other hand, he must develop the subject from the standpoint of the use system, which partially through legislation, but even more through judicial decision, is steadily gaining ground. If this were done in the conventional way, by writing wholly from the standpoint of the old law, and appending the recent decisions in the notes as stating conflicting rules or as indicating mere isolated departures in particular instances, the work would be worth no more than a digest. It is matter for congratulation that the author has seen clearly that two competing theories are in conflict here, has developed the one thoroughly out of the older cases and the recent cases which apply them, and has fitted the newer cases proceeding upon the newer theory into their place in a proper development of that theory and indicated the results to which that theory is likely to lead. Text-books developing the law in this manner are a significant and encouraging sign in American legal thought.

It might be suggested that the division of western states where the law of irrigation is in force into two classes, namely, those which apply the California doctrine of riparian rights on the private domain and of appropriation on the public domain, and those which adhere to the Colorado doctrine of appropriation throughout the entire jurisdiction, is not wholly adequate. Are there not in reality three classes of jurisdictions? In one class the appropriation system is in force on the public domain, while the common law is in force on private lands, but appropriations made on the public domain are valid against subsequently acquired riparian rights. In a second class the common law was originally in force over the whole jurisdiction, but statutes have subsequently introduced the appropriation system potentially for all or a part of the state. In a third group the appropriation system obtains exclusively over the entire domain, and has usually so obtained from the beginning. A distinction between the first and second classes seems to be necessary in that in the second group rights were acquired under the common-law doctrines which were in force for many years before the appropriation system was introduced or given sanction by legislation. In these jurisdictions a number of serious constitutional questions have arisen, and appropriations which may be made throughout the state must be subject to previously acquired riparian rights except as the latter are divested by some sort of condemnation. If a distinction is made between these jurisdictions, as, for example, the Dakotas, Kansas, and Nebraska on the one hand, and California, Montana, and Washington on the other hand, where practically from the beginning both riparian rights and appropriation have been coexistent, a number of apparent difficulties disappear.

It is a small matter, but a tantalizing method of cross reference by citing the reader to sections where the proposition in question is fortified by a further cross reference is employed too frequently. R. P.